

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1615 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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POLICE COMMISSIONER

Versus

KIRITSINH MAHOBBATSINH BRAHMBHATT

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Appearance:

MRS MANISHA LAVKUMAR AGP for Petitioners

MR YATIN OZA Sr Advocate with Mr RR VAKIL for Resp.No.1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/12/2000

CAV JUDGEMENT

By means of filing this Civil Revision Application, the petitioners-State of Gujarat seek to challenge the order dated 22nd June, 1998 passed by the learned Civil Judge (Sr. Division), Vadodara in Regular Civil Suit No. 317 of 1998 granting ad-interim relief

against the transfer order dated 25th April, 1998 of the respondent no. 1. The petitioner had earlier challenged the order passed by the learned Civil Judge (SD), Vadodara in Regular Civil Suit No. 317 of 1998 dated 22nd June, 1998 in Civil Misc. Appeal No. 277 of 1998. The learned Asstt. Judge, Vadodara has heard the matter and decided the same on 15th September, 1998 wherein the said appeal which has been filed by the petitioner-State has been rejected. Against that, the present Revision Application has been filed under Section 115 of the Civil Procedure Code. The respondent no. 1 working as a Police Inspector in D.C.B at Vadodara since 3rd January, 1997 is ordered to be transferred by the petitioner vide Order dated 25th April, 1998. By the said transfer order, the petitioner is sought to be transferred from Vadodara to Junagadh SRP Chowki as an armed SRP. The said order of transfer has been challenged by the respondent no. 1 on the ground of mala fide, political pressure and extraneous considerations. The learned Civil Judge (SD), Vadodara while entertaining the Regular Civil Suit No. 317 of 1998 filed by the respondent no. 1 herein had granted interim stay against the said transfer order which order ultimately has been confirmed in Civil Misc. Appeal No. 277 of 1998 vide order dated 15th September, 1998 made by the learned Asstt. Judge, Vadodara.

Mrs. Manisha Lavkumar, the learned AGP appearing on behalf of the petitioners submitted that in case of transfers, the Civil Court has no jurisdiction to interfere. She read over the entire judgment and order made by the Appellate Court and pointed out that the transfer in question has been made by the petitioners entirely in public interest and due to administrative exigencies. She stated that there is no mala fide exercise of power nor there is any colourable exercise of power at the hands of the petitioners. In fact, according to the learned AGP, it is a simple routine transfer made in the interest of the administration, however, the Civil Court has interfered with such transfer order and granted ad-interim relief which has been ultimately confirmed and appeal against the same has also been rejected. She referred various paragraphs of the Appellate Court's judgment and order and pointed out that there was no prima facie case proved by the respondent no. 1 before the Civil Court which requires relief in favour of the respondent no. 1. She also submitted that the findings recorded by the trial Court as well as lower appellate Court are baseless, perverse and uncalled for and no reasonable prudent man can come to such a conclusion. She also pointed out that some of

the documents which have been relied upon by the respondent no. 1 are unilateral documents solely produced by the respondent no. 1, and in such circumstances, reliance cannot be placed by the Civil Court, and therefore, the order passed by the Civil Court is illegal and contrary to the principles of the settled law. She also pointed out that in such transfer matters, the Civil Court shall have to restrain itself in interfering with the same; unless and until after recording the entire evidence by both the parties it comes to a conclusion that a clear case of malafide is proved then only the Civil Court can interfere, otherwise such orders cannot be made merely on the basis of some unilateral documents. She referred to paragraph nos. 3, 9, 14, 18, 20, 27, 31 and 32 of the judgement delivered by the lower appellate court. She also submitted that because of the transfer, there was no monetary loss to the respondent no. 1 and there is nothing on record produced by the respondent no. 1 which adversely affects the service conditions of the respondent no. 1. She also submitted that if there being any grievance against the transfer order in that case, the respondent no. 1 is required to make a representation to the authorities concerned, however, Court cannot interfere with the transfer. She also submitted that the powers under Order 39 Rule 2 has been wrongly exercised by the Civil Court and the finding that the order of transfer is mala fide is not based upon any evidence. She also submitted that the respondent No. 1 has not proved the allegations levelled against the petitioners. According to the learned AGP, transfer is an incident of service and it is within the powers of the petitioners to transfer the respondent no.1. In support of her arguments, she has placed reliance upon some of the decisions delivered by this Court as well as the Hon'ble Apex Court. The first authority amongst the same being in the matter of K. Ashok Reddy v. The Government of India & Ors., [AIR (1994) SC 1207], the case of Judges' transfer relating to Article 222 of the Constitution wherein the public interest has been defined. The next authority being the decision of this Court in the matter of District Superintendent of Police, Vadodara Rural & Ors. v. Chhatrasinh Chandrasinh Vadajiya, [1986 (2) GLR 1211] wherein a transfer of a Government servant made on administrative grounds is held to be legal and justified, with an observation that the Court should not interfere in such transfers. The next authority relied upon by the learned AGP being in the matter of Shanti Kumari v. Regional Deputy Director, Health Services, Patna Division Patna & Ors., [AIR (1981) SC 1577]. She submitted that while granting the interim orders, the Civil Court ought

to have exercised extra care and merely based upon allegations made in the plaint, no order could have been made by the Civil Court, particularly when the allegations have not been proved by the respondent no.1. She further submitted that both the Courts below have committed grave error in passing such orders which are contrary to the settled principles of law.

Countering the submissions made by the learned AGP, Mr. Yatin Oza, learned Sr. Advocate appearing on behalf of the respondent no.1 submitted that the Civil Court has power to grant the interim order under Order 39 Rule 2 of the Civil Procedure Code. The Civil Court has jurisdiction to pass such orders in case when prima facie on the basis of material, records, pleading and submissions, if the Court is satisfied that the order of transfer is mala fide and result of the colourable exercise of powers and/or arbitrary then in such circumstances, it is the duty of the Court to protect such employee who has been victimized at the hands of the employer. Mr. Oza has submitted that the respondent no. 1 herein had produced sufficient evidence before the trial Court at Mark 25/1 to 25/6 in support of the allegations made in the plaint. These documents have been referred to and relied upon by the Courts below. Mr. Oza has also submitted that the entry made in the Police Station Dairy at Mark 4/17 & 4/18 has been produced by the respondent. According to the learned advocate, the trial Court as well as the appellate Court both have applied its mind and considered the relevant records and allegations made against the present respondent no. 2 and the same have not been specifically denied by him before the trial Court, therefore, the conclusion of the trial Court as well as the appellate Court is legal and valid which does not require any interference by this Court while exercising the revisional jurisdiction under Section 115 CPC. Mr. Oza has relied upon decision of the Apex Court in the matter of the Municipal Corporation of Delhi v. Suresh Chandra Jaipuria & Anr., [AIR (1976) SC 2621. In the said decision, the apex Court has held that the Order 39 Rule 2 - interim injunction granted by the trial Court, confirmed by the appellate Court having concurrent finding - interference by the High Court under Section 115 CPC, in the circumstances, was unjustified. Mr. Oza has also relied upon the decision of the Apex Court in the matter of M/s. D.L.F Housing & Construction Co. (P) Limited v. Sarup Singh & Ors., [AIR (1971) SC 2324) wherein the Apex Court has observed that, 'while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact

however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the the lower Court. It seems to us that in this matter, the High Court treated the revision virtually as if it was an appeal.' Mr. Oza has relied upon the decision of the Apex Court in the matter of the Managing Director (MIG) Hindustan Aeronautics Limited, Balanagar, Hyderabad & Anr., v. Ajit Prasad Tarway, Manager (Purchase & Stores), Hindustan Aeronautics Limited., [AIR (1973) SC 76] wherein the Apex Court has observed that the High Court; under Section 115 of CPC, had no jurisdiction to interfere with the order of the first appellate Court. It is not the conclusion of the High Court that the first appellate court had no jurisdiction to make the order that it made. The order of the first appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate Court had exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction under Section 115 CPC, relying upon the decisions of the Apex Court in the matter of D.L.F Housing & Construction Company (P) Limited v. Sarup Singh., [AIR (1966) SC 153] and Pandurang Dhoni v. Maruti Hari Jadhav., [AIR (1971) SC 2324].

Thus, according to Mr.Oza, while granting the interim injunction against the transfer order, both the Courts below have not committed any jurisdictional error because both the Courts have jurisdiction to entertain and try the application Exh. 5 and after considering the evidence, the Courts below have passed order, and therefore, while exercising the powers under Section 115 CPC, this Court cannot examine the matter merely on the ground of its illegality and validity unless the test which has been specified under Section 115 CPC is satisfied. Mr. Oza has submitted that the petitioner has not been able to satisfy that the trial Court as well as the Appellate Court have committed any jurisdictional error and/or any material irregularity which requires interference at the hands of this Court, and therefore, according to his submissions, the present Civil Revision

Application is required to be dismissed.

I have heard both the learned counsel at length. Perused the orders made by the Civil Court as well as by the Appellate Court. Learned AGP Mrs. Manisha Lavkumar has vehemently read over entire judgment delivered by the Appellate Court and pointed out that in such case of transfer which being an administrative order, the Civil Court ought not to have passed such orders. In light of these submissions made by both the Courts below and the relevant observations made by the Appellate Court in paragraph 16 and 20 wherein the respondent no. 1 has made allegations against the defendant no. 2 & 3 therein that at the instance of some political leaders, the defendant nos. 4 & 5, the impugned transfer order has been made. The respondent no. 1 has also produced sufficient prima facie evidence indicating that he was threaten to be transferred from Vadodara City because the defendant nos. 4 & 5 therein were displeased with the work of the respondent no. 1 as he had declined to act beyond the law. There was no counter-affidavit on behalf of the defendant nos. 2 & 3 and no denial of such allegations on the part of the defendant nos. 4 & 5, and therefore, the trial Court has considered the same and come to a reasonable inference in favour of the respondent no. 1 herein. After considering all the evidence which were on record, the appellate Court ultimately came to the conclusion that the trial Judge has considered all the documentary evidence produced on record and he has properly applied the law applicable to the facts and circumstances of the case and in no case it can be held that the impugned order of transfer is arbitrary, perverse, capricious and/or illegal, liable to be set-aside, and therefore, there is no reason for interference with the discretionary order passed by the trial Judge.

In view of this discussion recorded by the appellate Court when the trial Court is having jurisdiction under Order 39 Rule 2, exercised the powers and passed order on the basis of the fact that the transfer order is prima facie mala fide and it amounts to colourable exercise of power and arbitrary and that the transfer order has been made with a political purpose and motive, therefore, the trial Court has jurisdiction to entertain and try the suit. The appellate Court has at length discussed the evidence which were considered by the trial Court. Therefore, considering the limited scope of power left with this Court under Section 115 of Civil Procedure Code, the relevant observation made by the Apex Court in the matter of DLF Housing &

Construction Co. (P) Limited v. Sarup Singh & Ors.,  
[AIR (1971) SC 2324] at paragraph nos. 7 & 8 are  
reproduced hereunder :-

7. The submissions made by Shri Gupte, in  
our opinion, possess merit. The  
revisional jurisdiction has been  
conferred on the High Court by Section  
115, Civil Procedure Code in these  
terms:

'115. The High Court may call for the  
record of any case which has been decided  
by any Court subordinate to such high  
Court and in which no appeal lies thereto  
and if such Subordinate Court appears -

- (a) to have exercised a jurisdiction  
not vested in it by law;
- (b) to have failed to exercise a  
jurisdiction so vested or
- (c) to have acted in the exercise of  
its jurisdiction illegally or  
with material irregularity, the  
High Court make such order in the  
case as it thinks fit.'

The mass of reported cases only serve to  
show that the High Courts do not always  
appreciate the limits of their  
jurisdiction under this section.

8. The position thus seems to be firmly  
established that while exercising the  
jurisdiction under Section 115 it is not  
competent to the High Court to correct  
errors of fact, however, gross or even  
errors of law unless the said errors have  
relation to the jurisdiction of the Court  
to try the dispute itself. Clauses (a)  
and (b) of this Section on their plain  
reading quite clearly do not cover the  
present case. It was not contended, as  
indeed it was not possible to content,  
that the learned Addl. District Judge has  
either exercised a jurisdiction not  
vested in him by law or had failed to  
exercise a jurisdiction so vested in him,

in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words 'illegally' and 'with material irregularity' as used in this Clause do not cover either error of facts or of law. They do not refer to the decision arrive at but merely to the manner in which it is reached. The errors contemplated by this Clause may, in our view, relate either to breach or some provision of law or to material defeats of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 15 of the Code. Merely because the High Court would have fared inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Addl. District Judge in his manner of dealing with this question. It seems to us that in this matter, the High Court treated the revision virtually as if it was an appeal."

Similarly, in the matter between the Managing Director (MIG) Hindustan Aeronautics Limited, Balanagar, Hyderabad & Anr., v. Ajit Prasad Tarway, Manager (Purchase & Stores), Hindustan Aeronautics Limited., reported in AIR (1973) SC 76, at paragraphs no. 5 at page 77 are reproduced as follow :-

5. In our opinion, the High Court had no jurisdiction to interfere with the order of the first appellate Court. It is not the conclusion of the High Court that the



first appellate Court had no jurisdiction to make the order that it made. The order of the first appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate Court exercised its jurisdiction either illegally or with material irregularity.

Considering the observations made by the apex Court and after perusing the orders made by the Courts below, according to my opinion, the learned AGP has failed to satisfy this Court that the trial Court had no jurisdiction to make the order and exercise its jurisdiction illegal or with material irregularity. In absence of that, this Court cannot examine the illegality and validity of the order made by the trial Court as well as Appellate Court. Therefore, according to my opinion, there is no substance in the present Civil Revision Application, and same is, accordingly stands dismissed with no order as to costs. Direct service permitted.

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Prakash\*